

**Questions and Answers on the Electronic Availability of Transcripts
and Transcript Redaction Procedures
for Contract Court Reporters**

September 24, 2009

- 1 Q. Under the Judicial Conference’s electronic availability of transcripts policy, how will court reporters file the original transcript with the clerk of court?
- A. Court reporters will be given authority to file the transcripts directly in CM/ECF (Case Management/Electronic Case Filing) pursuant to procedures established by the court and will be able to upload the transcripts to the case file.

Transcripts should be full-sized transcripts in PDF format to be filed using the electronic filing system.

- 2 Q. When does the electronic transcript have to be filed with the clerk of court?
- A. The requirement to provide the original transcript to the clerk for the records of the court has not changed. As in the past, when a transcript is originally produced, the original transcript must be promptly delivered to the clerk. The Guide to Judiciary Policies and Procedures states that the original transcript should be delivered to the clerk concurrently with - but not later than 3 working days after - delivery to the requesting party.

- 3 Q. Will court reporters have to electronically file transcripts already filed with the clerk (retroactively)?
- A. No. Electronic filing with the clerk is required prospectively.

- 4 Q. If the transcription software used by court reporters does not print to PDF, are court reporters required to purchase the required software, or will the clerk's office provide this software? (This could refer to Adobe Writer software or DOS-based transcription systems.)
- A. Yes, court reporters are on their own with getting software to accomplish the electronic filing with the clerk. This policy does not change a court reporter's responsibility to provide their own supplies.

- 5 Q. When will the electronic transcript be made remotely available to the public through the PACER system (**Public Access to Court Electronic Records**)?
- A. The electronic transcript will be remotely available to the public through the PACER system 90 days **AFTER** it has been electronically filed by the court reporter or delivered to the clerk for filing.

The PACER system allows public access to view records/documents filed with the clerk. PACER allows the public to VIEW transcripts after the initial 90-day waiting period and will assess that person a fee of \$.08 per page for anything downloaded.

- 6 Q. Will anyone be able to obtain a copy of the transcript during the initial 90-day period after the original transcript has been filed with the clerk?
- A. Yes, any counsel, party, or member of the public wanting a copy of a transcript during the initial 90-day waiting period will be able to purchase a copy from the court reporter only. The clerk is not authorized to provide a transcript to anyone requesting a copy during the initial 90-day waiting period and will refer the person to the court reporter to purchase a copy, although, court staff will have appropriate access during the initial 90-day period to any transcript filed with the clerk through the CM/ECF system.
- 7 Q. Will counsel, a party, or the public be able to review the transcript during the initial 90-day waiting period?
- A. Yes, the transcript on the CM/ECF system will be available for review and inspection at the court's public terminal during the initial 90-day waiting period. In addition, any counsel or parties to a case who have received a transcript from a court reporter shall be designated by the court reporter to gain access to the transcript through the CM/ECF system. Counsel of record in a case who have **NOT** purchased a copy of the transcript from the court reporter will **NOT** be designated to gain access to view the transcript through CM/ECF until they purchase it from the court reporter or until the initial 90-day period has expired.
- 8 Q. How will the clerk or the CM/ECF system know which attorneys have purchased a transcript from the court reporter and can receive access to the transcript through the CM/ECF system?
- A. Once a court reporter is given access to CM/ECF, they will file a Notice of Release Transcript Restriction event. By filing this event the court reporter informs the Clerk's office which attorneys should be allowed access to the transcript.
- 9 Q. For federal government agencies (including the Department of Justice - DOJ) that request and receive a transcript copy from a court reporter, does the court reporter have to await payment before granting access to the transcript through CM/ECF?
- A. No. Upon completion of the transcript ordered by a federal government agency, the agency shall be granted access to the transcript in CM/ECF

through the court reporter. Access will allow the government to view the transcript on CM/ECF.

- 10 Q. Once the transcript is filed with the clerk, may court reporters sell copies to other parties requesting the transcript?
- A. Yes, nothing in the new policy restrict counsel, parties, or the public from requesting copies of a transcript from a court reporter - - during or after the initial 90-day waiting period.

- 11 Q. How will a court reporter know when to redact a transcript?
- A. The redaction of transcripts will be requested by counsel to a case. Counsel will file a redaction request within 21 calendar days, after filing of the transcript with a specific request for redaction noting the page numbers and line numbers where redaction is required. The attorneys will be required to provide a copy the redaction request to the court reporter and certify that a copy has been provided.

It is recommended that the court reporter wait until the deadline of the redaction requests is due (or contact counsel) to insure that all the redaction requests have been received before any redactions are made. There should only be one redacted transcript.

- 12 Q. How should the redaction be made?
- A. There are various software programs that are available to assist court reporters in the redaction process. The use of these programs is permissible, as long as page and line integrity remains intact. If you do not have access to such a program, you may also manually redact. To manually redact, the court reporter should place an “X” in the space of each redacted character. Manual redactions should have the same number of X's as characters deleted in order to preserve page and line numbers of transcripts. Whatever method is used to redact, page and line integrity must be maintained from the original transcript to the redacted transcript.

- 13 Q. Are there any other changes to the format of a redacted transcript?
- A. Yes. The title page of the transcript should indicate that it is a redacted transcript immediately below the case caption and before the Volume number and the name and title of the Judge. A notation of “REDACTED TRANSCRIPT” should be inserted on a blank line, and care should be taken to ensure that the addition of this text does not cause changes to the length of the title page. Also, at the end of the transcript, and without causing a “page roll-over” (a smaller font or single spacing may be used)

the redacted transcript should be certified by the court reporter stating: “I (we) certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk of court on dy/mo/year, and incorporating redactions of personal identifiers requested by the following attorneys of record: _____ in accordance with Judicial Conference policy. Redacted characters appear as an “X” (or a black box) in the transcript.”

- 14 Q. When requested to redact a transcript, does the word “redacted” need to be put in each redaction? For example: “My son, M (redacted), handled Account No. (redacted) 4567 and must have made a mistake.”
- A. No, it is not necessary to note redactions in the body of the transcripts; using X’s (or black boxes) in place of the redacted characters is all that is required in the body of the transcript. **Example: “My son, Matt Smith, handled Account No. 558881111,” should be redacted as, “My son, MXXX SXXXX handled Account No. XXXXX1111.”**
- 15 Q. Once a transcript is electronically filed and a redaction is requested by a party, what is the court reporter to do in the event the redactions change the subsequent page and line numbers in said transcript? Parties using the transcript on appeal would have been furnished a transcript with possible inconsistent line/number issues.
- A. As described in question 12 above, the page and line numbers should be preserved in the redacted transcript by using X’s (or a black box) for each character redacted or by using a program that does not alter formatting.
- 16 Q. When a court reporter electronically files the original transcript in CM/ECF, he/she also provides the transcript to the ordering party. If a transcript is requested to be redacted, the court reporter electronically files the redacted transcript in PDF format within the 10-day time frame. Does the court reporter also send a redacted copy to the ordering party as well?
- A. No. The review of transcripts for information required by the rules to be redacted is required to allow the court to post the transcript electronically for remote public access after the initial 90-day period. Therefore, there is no requirement to send a copy of the redacted transcript to the parties who originally ordered the transcript. The redacted transcript only needs to be electronically filed in CM/ECF by the court reporter.
- 17 Q. Who should be responsible for printing and providing the original transcript to the Court of Appeals?

- A. The district court is responsible for printing the original transcript from its records if it is needed by the Court of Appeals. This cost burden should not be placed on the court reporter. The court reporter will no longer be required to file the original, full-sized, hard copy transcript to the clerk.
- 18 Q. Will the unredacted transcript that is originally electronically filed in CM/ECF always be a restricted document?
- A. Yes. The unredacted transcript will remain restricted. Additionally, any transcripts of voir dire proceedings or juvenile proceedings will always remain restricted and will not be made available to the public; therefore, there will be no redaction requests to a voir dire transcript or juvenile transcript. Voir dire transcripts must be filed as a separate volume.
- 19 Q. Once a court reporter completes the production of a transcript and files the original with the clerk, does the court reporter then have the obligation to notify the parties that the original transcript has been filed and then provide them with a copy of it?
- A. Yes. Court reporters must file a Notice of Filing Official Transcript with each transcript. This Notice of Filing Official Transcript will be served upon parties enrolled in the electronic notification system by CM/ECF. The court reporter must to serve the Notice of Filing Official transcript to parties who are not registered for electronic notification.
- The court reporter has no obligation to provide a copy of the transcript to a party unless the party ordered it. After the transcript is filed with the clerk, a court reporter may sell a copy of the transcript to counsel, a party or the public if requested. This copy can be paper or electronic; however, the transcript is not to be made remotely electronically available to the general public before the redaction period has run and the redactions have been completed.
- 20 Q. How will the court reporter know who to send a hard copy Notice of Filing Official Transcript when the transcript is electronically filed?
- A. After electronically filing a transcript in CM/ECF, a list of parties registered to receive electronic notification is automatically generated, and they will receive notice that a transcript has been filed. There is also a list of parties (with addresses) automatically generated who do not receive electronic notification to whom the court reporter must send a hard copy of the Notice of Filing Official Transcript.

- 21 Q. Does the court reporter need to send a Notice of Filing Transcript to a non-registered party who does not automatically receive electronic notification that a transcript has been filed, if that party has ordered and received the transcript that has been filed?
- A. Yes. Although redundant, this process insures that other parties to the case know that the non-registered party has also received notice that a transcript has been filed.
- 22 Q. As the court reporter is preparing a transcript, if she/he notices that redactions will be necessary, should the court reporter do the redactions then and there? Or, when the transcript is sent to the parties, should the court reporter inform the parties that material needs to be redacted at certain page and line numbers? Or should the court reporter wait until she/he hears from the parties or the court?
- A. No, court reporters do not have the responsibility to redact information unless there is a redaction request made by the parties to the case after the transcript has been filed. Court reporters also do not have a responsibility to notify the parties of material that should be redacted. The parties have the responsibility to review the transcripts and request redactions within the 21-day time frame after the transcript has been filed, if necessary.
- 23 Q. What about using initials of juveniles during the initial preparation of the transcript by the court reporter to save time for all parties?
- A. Unless the attorneys stipulate to the use of initials of the juvenile and receive approval by the court on the record or through a court order, the court reporter must type the juvenile's name verbatim in the original transcript, and it will be the responsibility of the attorney to request a redaction of the name after the transcript is filed.
- 24 Q. What responsibility would the court reporter have if the parties did not request redaction but the court reporter knows that redaction should take place?
- A. None. It is not the responsibility of the court reporter to identify material in the transcript that should be redacted. The Judicial Conference policy imposes that responsibility on counsel.
- 25 Q. How are the redaction requests prepared by the attorneys for the court reporters to be handled?
- A. The redaction requests will be filed with the clerk, and the attorneys will be required to certify that a copy was provided to the court reporter.

Filing of the redaction requests with the clerk relieves court reporters from having to handle filing and retrieval of these redaction requests and may be the most appropriate and efficient method of tracking these requests. The attorneys will be required to certify that a copy was provided to the court reporter. There is no requirement that the redaction requests be served on opposing counsel or parties. It should be noted that if these redaction requests contain the actual personal identifiers, all efforts should be made to keep them confidential.

- 26 Q. What are the personal identifiers that a party may request be redacted?
A. The redaction of the following personal identifiers should be requested from counsel:
- Social Security numbers (or taxpayer identification numbers) to the last four digits (**example: XXX-XX-1234**);
 - financial account numbers to the last four digits (**example: XXXXXXXX1234**);
 - dates of birth (**example: 02-05-1963 should be XX-XX-1963 or February 5, 1963 should be XXXXXXXX X, 1963**;
 - individuals known to be minor children to the initials (**example: Joe Smith should be JXX SXXXX or Joe Smith's should be JXX SXXXX'S**); and
 - in criminal cases, any home addresses stated in court to the city and state (**example: 222 S. Ave., Pierre, South Dakota should be XXX X. XXX., Pierre, South Dakota**).
- 27 Q. May parties move to redact other information in a transcript other than the specified identifiers?
A. Yes. While the court reporter is authorized to redact the specified personal identifiers noted in the answer to question 26 above, the moving party must receive a ruling of the court before other information in the transcript may be redacted.
- 28 Q. How will Voir Dire transcripts be handled under the new policy
A. Voir dire transcripts must be filed as separate volumes. They will have restricted access so that they are not viewable through PACER, and do not need to be redacted.
- 29 Q. Is there a fee that the court reporter can charge for making the redactions?
A. No. The Judicial Conference has not authorized an additional fee for providing redacted transcripts to the court for the electronic records of the court.

- 30 Q. When a transcript is requested from the court reporter by a third party (for example, the media or a researcher), what version (redacted or unredacted) should the court reporter sell?
- A. If both redacted and unredacted versions exist, the redacted transcript is the preferred version to be sold. Selling it, instead of the unredacted version, will help prevent the dissemination of the personal information that the rules require be redacted in all court filings, and could help in preventing identify theft.
- 31 Q. Once a court reporter receives redaction requests from the attorney(s), how long does the court reporter have to redact the transcript and electronically file it?
- A. 10 days.
- Although this may seem like a short period of time, the redaction process is a fairly short process, according to our federal official reporters, and does not happen as frequently as initially thought it would.
32. Q. How does the court reporter certify/sign the original transcript before electronically filing it with the clerk?
- A. The court reporter is allowed to sign the transcript /s/ and his/her name. The court reporter also must provide a full address, telephone number, and e-mail address below his/her name.